

1 (2) Contrary to assertions of Messrs. Wood and Gillan and their suggestions to
2 downplay the role this Commission has in determining where impairment exists
3 and does not exist, BellSouth explains that the reason the FCC devolved its
4 responsibility to the state commissions was to ensure that a more granular,
5 market-by-market analysis was performed.

6
7 (3) With respect to the definition of the geographic market, BellSouth discusses the
8 diverse and contradictory position of the parties to this proceeding. MCI and
9 AT&T offer varying definitions within their own corporate position. Even
10 through the testimony of CompSouth, Mr. Gillan offers a definition that is in
11 conflict with MCI, one of its member corporations. I explain that given the
12 differences in proposed definitions, following BellSouth's proposal, UNE rate
13 zones subdivided by component economic areas ("CEAs"), as discussed more
14 fully by Dr. Christopher Pleatsikas, meet the requires of the *TRO*.

15
16 (4) BellSouth believes that its position that a 3 or fewer line cross over point for mass
17 market customers is reasonable and stays within the mandate of the *TRO*.
18 However, BellSouth recognizes that raising the cutoff, as Mr. Gillan has
19 suggested, only improves the chance of finding mass-market non-impairment,
20 and so is not unappealing to BellSouth. However, the Commission should remain
21 mindful of the requirements of the *TRO* and the FCC rule that a single, clear
22 cutoff point be established between "mass market" and "enterprise" customer
23 segments.

24

1 (5) My testimony rebuts the CLPs' assertions that the triggers test should contain
2 additional criteria not included in the FCC rule setting forth the trigger test. Ms.
3 Pam Tipton provides testimony relating to these fictional criteria and how, in
4 contrast, BellSouth has simply applied the FCC's straightforward test to the
5 markets that have been proposed to be unimpaired without access to local
6 switching.
7
8 (6) My testimony explains while the potential deployment test is not quite as
9 straightforward as the "bright-line" self-provisioning trigger test, the *TRO*
10 described it well enough for this Commission to examine the three criteria
11 outlined in the *TRO*: evidence of actual switching deployment, operation barriers
12 (such as the availability of collocation space and cross-connects), and economic
13 barriers. If, after weighed these criteria, the Commission decides that self-
14 provisioning of local switching could be economic, then it should make a finding
15 of non-impairment.
16
17 (7) Finally, I provide testimony explaining that this Commission must adopt and
18 implement a batch hot cut process within 9 months of the effective date of the
19 *TRO*. I also discuss how BellSouth decided to base its proposed rate for the batch
20 hot cut process on the already approved TELRIC rates established by this
21 Commission in the UNE Cost proceeding.

MAR 01 2004

Clerk's Office
N.C. Utilities Commission**EXECUTIVE SUMMARY – SURREBUTTAL - JAMES W. STEGEMAN****ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.****BEFORE THE NORTH CAROLINA UTILITIES COMMISSION****DOCKET NUMBER P-100, SUB 133Q****MARCH 1, 2004**

In my surrebuttal testimony, I address five key topics in response to rebuttal testimony provided by Dr. Bryant and Mr. Webber of MCI, and Mr. Wood and Mr. Klick of AT&T.

First, the BACE model is open to review, structurally sound, and is a valid TRO potential deployment analysis tool. Indeed, each of the parties reviewing the model either imply that BACE can be used to support their own claims or use BACE results to support their claims. The availability of the BACE documentation, the BACE demonstration scenario, the BACE source code, and the full BACE model with all tables open to review, provide sufficient avenues for any party to evaluate the model. These avenues also provide a level of model review comparable to past telecommunications models and is comparable to the level of access to the model that I have myself as the model developer. In regard to data input, some of the underlying current market data used in BACE is not directly user adjustable since it is proprietary and commercially valuable. However, the user of BACE has the ability to set CLP price and demand levels based upon this current market data. That is, CLP price discounts and bundle prices, and penetration rates are fully determined by the user making it unnecessary for the user to directly change the initial market data to evaluate economic impairment.

1 Second, the rebuttal by the other parties concerning BACE is inconsistent and
2 contradictory in three areas: whether the fundamental BACE approach is reasonable (in
3 my opinion, BACE is reasonable and consistent with the TRO); whether BACE is
4 sensitive or insensitive to changes in inputs (in my opinion, BACE reacts appropriately to
5 input changes); and which BACE optimizations should be utilized.

6

7 Third, the complaints by the CLPs regarding BACE are generally founded on
8 misinterpretation or misrepresentation of BACE.

9

10 Fourth, Mr. Wood's rebuttal regarding BACE is unsupported, undocumented and
11 misleading.

12

13 Fifth, BACE is clearly superior to the other models filed in this proceeding and it satisfies
14 the TRO guidelines for modeling economic impairment.

15

16 To conclude, BACE provides a valid, reviewable and robust TRO tool to investigate
17 whether lack of access to UNE switching creates an economic barrier preventing CLP
18 "potential deployment".

19

20

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MAR 01 2004

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N.C. Utilities Commission

1 SUMMARY OF THE SURREBUTTAL TESTIMONY OF
2 PAMELA A. TIPTON
3 ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.
4 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
5 DOCKET NO. P-100, SUB 133Q
6 MARCH 1, 2004
7
8

9 In my surrebuttal testimony, I respond to certain portions of the rebuttal
10 testimonies of AT&T witness Jay Bradbury, CompSouth witness Joe Gillan,
11 MCI witness Dr. Mark Bryant, and Department of Defense witness, Harry
12 Gildea.

13
14 My testimony addresses the alleged "criteria" that witnesses Gillan, Bradbury
15 and Bryant claim CLPs must meet to "qualify" as trigger candidates, and I
16 demonstrate that such assertions go beyond the *straightforward criteria* set
17 forth in the FCC's rule. The rule is *straightforward* and requires only that
18 competing carriers 1) *not be affiliated with each other* or the incumbent and 2)
19 *be serving mass market customers* in the particular market with the use of
20 their own switch.

21
22 My testimony also addresses specific arguments by AT&T witness Bradbury
23 that AT&T's local switches do not qualify as mass market switches, and I
24 demonstrate why his arguments are inappropriate. Additionally, my testimony

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1 addresses witnesses Bryant and Gillan's attempts to disqualify the trigger
2 companies. I explain why BellSouth considers these CLPs to be trigger
3 companies.

4

5 Finally, I address the market definition proposals of witnesses Gillan and
6 Gildea and identify the markets that would be trigger markets under such
7 proposals.

8

9 This concludes my summary.

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MAR 01 2004

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BELLSOUTH TELECOMMUNICATIONS, INC.
SURREBUTTAL TESTIMONY OF ALPHONSO J. VARNER
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

FILED MARCH 1, 2004

DOCKET NO. P-100 SUB 133Q

EXECUTIVE SUMMARY

My Surrebuttal Testimony explains why various performance related positions taken by MCI witness Sherry Lichtenberg and AT&T witnesses Cheryl Bursh and Mark David Van De Water are seriously flawed. First, these witnesses attempt to summarily dismiss the relevancy of BellSouth's loop provisioning performance data results to the issues in this proceeding. Second, these witnesses attempt to present this same data in support of the misguided premise that if performance standards for UNE-P and UNE-Loops are different, CLPs will be impaired without unbundled local switching. Third, the witnesses claim that consolidated performance results do not provide a realistic view of BellSouth's performance in migrating the specific types of loops that will be migrated for mass-market customers. Lastly, the CLP witnesses incorrectly claim that BellSouth's proposed enhancements to the North Carolina Service Quality Measurement (SQM) and SEEMs Plans are inadequate.

Regarding the first issue, certain witnesses cite the same paragraph (§ 469) from the FCC's Triennial Review Order, as rationale for their position that BellSouth performance data on loop provisioning is irrelevant. In this part of their testimony

1 they ignore the fact that paragraph 512 of the TRO actually encourages state
2 commissions to use this same data. The performance data provide a factual
3 basis for assessing BellSouth's ability to perform loop provisioning in a timely and
4 consistent manner. These facts show that BellSouth's performance in this area is
5 excellent. So rather than address the facts, they attempt to convince this
6 Commission that they can't look at them because the FCC forbids them to do so.
7 Of course the FCC never said this and as practical matter there is no reason to
8 substitute speculation for facts in this instance.

9
10 In the second area CLPs now use the same data that they said the FCC forbade
11 this Commission from using, but they attempt to change the standards to a
12 nonsensical result. Here they use BellSouth performance data to allege that the
13 different performance standards for UNE-P and UNE-L will cause the CLPs to be
14 impaired without unbundled local switching Ms. Bursh claims that "BellSouth
15 uses the wrong standard in attempting to demonstrate that CLPs do not face
16 operational barriers to market entry absent unbundled local switching."

17 Both Ms. Bursh and Ms. Lichtenberg point out that the Order Completion
18 Intervals for UNE-P and UNE-L are different, and on that basis conclude that
19 UNE-L performance is inferior, implying that they are impaired as a result of the
20 difference. However, their self-proclaimed performance standard that UNE-P
21 and UNE-L should be the same for order completion interval cannot be found
22 anywhere in the TRO, nor do they indicate how CLPs are impaired due to the
23 difference.

24 These witnesses rely on a fragment of footnote 1574 as the sole basis for their
25 position. However, when you read the entire footnote, especially in the context of

1 paragraph 512 in which it is cited, you see that the CLPs are completely wrong.
2 The FCC did not create some new performance standard. Instead they are
3 referring to the same standards for nondiscriminatory access that you already
4 measure for UNE loops.
5 As a matter of common sense, Bellsouth's unbundled loop performance should
6 not equal its UNE-P performance. Unbundled loops and UNE-P are different
7 serviced. This Commission recognized this fact when it established performance
8 standards for each service. If this Commission believed that the two services
9 were the same, which the CLPs vehemently denied in the measurement
10 proceedings, it would presumably have set equal standards for them.
11 The real essence of what Ms. Bursh and Ms. Lichtenberg allege is simply that it
12 takes less time on average to complete UNE-P orders, which are predominantly
13 orders requiring a records change only, and no physical work, than the time
14 involved on average to complete UNE-L orders where some form of physical
15 work is always required. We agree with this observation, but it is not germane to
16 the issues confronting this Commission in this proceeding.
17
18 The third claim by these witnesses is that consolidating results for 'all loops'
19 "does not give a realistic view of BellSouth's performance in migrating specific
20 types of loops that will most frequently be migrated for mass market customers."
21 Ms. Bursh provides examples of a few failed submetrics and claim that these
22 illustrate masked performance. Of course that ignore that BellSouth consistently
23 passes most of the submetrics. First, the fact is that my Exhibit AJV-1 and
24 Attachment 1 not only demonstrates that for UNE Local Loops, BellSouth
25 processed 97% of all LSRs within the specified benchmark intervals during the

1 12-month period (October 2002 - September 2003), met performance standards
2 for 97% of the provisioning submetrics and 93% of the maintenance & repair sub-
3 metrics, but also provided detailed performance data for each submetric. Ms.
4 *Bursh* is obviously aware of this fact because she uses some of this data in her
5 testimony. Even more telling is that a detailed analysis reveal that performance is
6 actually stronger than the aggregate statistics indicate because the data for most
7 of the performance misses reflects a data anomaly instead of a performance
8 problem. Regardless of the data view chosen, either the individual or aggregated
9 presentation of data, the facts show that BellSouth performance is very high.
10 Lastly, the CLP witnesses incorrectly claim that BellSouth's enhancements to the
11 North Carolina SQM and SEEMs Plans are inadequate. In Exhibit AJV-2,
12 BellSouth proposed 1 new ordering measurements, modifications to 5 existing
13 ordering measurements as well as 1 new provisioning measurement and
14 modifications to another existing provisioning measurement. Several of these
15 measurements are already in the NC SEEM plan or proposed to be included in
16 the SEEM plan.
17 *These proposed modifications, along with the existing North Carolina SQM and*
18 *SEEM plan, are sufficient to address hot cut performance concerns.*
19 Witnesses propose titles for additional metrics that are impossible to decipher
20 what they want to measure exactly. However it appears that the events that they
21 propose to measure are already measured in the existing SQM, as ordered by
22 this Commission, or the revision that I proposed.
23
24 I have presented a few examples of the types of issues raised by the CLPs in this
25 proceeding relative to performance data results for loop provisioning and the hot

1 cut process, and these examples are representative of the unsubstantiated
2 nature of the issues consistently raised by the CLPs. My testimony includes
3 actual performance data, verified by independent third parties, which BellSouth
4 provides to this Commission on a monthly basis for its review. These data
5 provide the Commission with a demonstration of solid and consistent current
6 performance from which the Commission may rightly infer that BellSouth will
7 continue in the future to provide this high level of service.

COMPETITIVE CARRIERS OF THE SOUTH

(Docket No. P-100, Sub 133q: TRO → UNE-P)

The NCUC is Providing the Direct, Rebuttal, and Surrebuttal Matrices of Issues and Executive Summaries for the Following CompSouth Witness:

Joseph Gillan – Direct (1/9/04), Rebuttal (2/16/04), Surrebuttal (3/1/04)

**COMPSOUTH'S
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133q**

FILED
FEB 16 2004
Clerk's Office
N.C. Utilities Commission

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Joseph Gillan	<ul style="list-style-type: none">• Overview and introduction of BellSouth's direct case• Geographic market area• Local switching triggers	<ul style="list-style-type: none">• §51.319(d)(2)(ii) and (iii)• 47 C.F. R. §51.319(d)(2)(i)• 47 C.F. R. §51.319(d)(2)(iii)(A)

**Executive Summary of Direct Testimony
of CompSouth Witness Joseph Gillan
Docket No. P-100, Sub 133q**

There is only one thing at stake in this proceeding: local competition for the average business and residential telephone customer, in every exchange in the State of North Carolina. The purpose of my testimony is to document, explain and then defend this fact.

Although the testimony is long in pages, it is short on message. There are three key points.

First, the Commission is finally seeing competition emerge throughout the State of North Carolina, for the very users that the Commission should be most concerned with: the typical residential and small business customer purchasing voice service. Attached to this summary is Exhibit JPG-1 that graphically depicts the relative share gained by UNE-P in every BellSouth wire center in the state (with the largest wire centers on the left, and the BellSouth's most rural exchanges on the right). As the chart graphically illustrates, local competition is beginning to emerge throughout the state, not only in its larger cities, but in its small towns as well.

Second, the reason that competition is emerging is quite simple: Unbundled local switching provides CLECs with a cost-effective means to access BellSouth's monopoly loop network in a manner that gives choice to the average user. Unbundled local switching (in combination with the local loop in UNE-P) forms a commercially viable wholesale arrangement similar to the wholesale arrangements that BellSouth uses to provide its long distance services. Although BellSouth uses long distance wholesale services to offer its bundle packages (it now serves more than 25% of the market), it seeks to eliminate the one strategy that offers others the opportunity to compete with packages of their own.

Third, the Triennial Review Order (TRO) does not call for the elimination of local switching in North Carolina. To the contrary, the FCC determined that CLECs were impaired without access to unbundled switching on a nationwide basis. The purpose of this proceeding is not to *ratify* that finding for North Carolina, it is only to determine whether there are *exceptions*. The part of the TRO process that checks for potential "exceptions" that my testimony focuses on is the "trigger test" – i.e., that section of the TRO that asks states to look at actual competitive conditions in their state to determine whether the national finding of impairment does not apply. My testimony outlines for the Commission the basic elements of the trigger analysis, and identifies the criteria that must be present in order for a company to be considered a "triggering competitor."

My testimony does address other topics. The testimony discusses the basic framework of the TRO and attempts to describes its key steps in understandable terms. I also make recommendations as to how the Commission should address the pricing of any element that BellSouth must continue to offer under section 271 of the Act, even if the Commission's reaches a different impairment finding here. And I explain how the Commission should prepare to address challenges to impairment in the future. The three points above, however, form the core of the testimony and the points most important for the Commission to remember.

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

In re: Implementation of requirements arising)	
from Federal Communication Commission)	Docket No. P-100, Sub 133q
Triennial Review Order: Local Circuit Switching)	
for Mass Market Customers)	Filed: February 16, 2004
)	

**SUMMARY OF REBUTTAL TESTIMONY OF
JOSEPH GILLAN
ON BEHALF OF COMPSOUTH**

My rebuttal testimony responds to BellSouth's claim that there is sufficient facilities-based mass market competition to invoke automatic "triggers" that would remove unbundled local switching in 70% of North Carolina, effectively ending UNE-P based competition in the state. BellSouth's analysis, however, is fundamentally flawed. Among other deficiencies, BellSouth counts enterprise switches as mass market switches, it ignores whether carriers are *actively providing* mass market services today, and it disregards whether its trigger candidates are likely to continue providing mass market services in the future.

Each of the deficiencies in BellSouth's trigger analysis violates specific guidance provided by the FCC to ensure that the triggers would be applied consistently. A faithful application of the triggers should produce outcomes consistent with the FCC's own findings – that is, where a state commission observes facts that are comparable to data that the FCC used to find impairment, then that *same* set of facts cannot be abused in a "trigger analysis" to reverse that finding. The FCC was clear that the states were to apply judgment in the same manner as the FCC: "To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations,

we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law.”

Significantly, the level and form of competitive activity cited by BellSouth in this proceeding – even if their data is accepted as accurate -- is no different than that which the FCC rejected as being adequate proof of non-impairment. Even if all of the UNE loops provided by BellSouth are assumed to serve the mass market – and, as my testimony explains, this assumption is flatly wrong – the competitive share of UNE-L in North Carolina would only be 2%. The FCC was well aware that *some* analog loops were being purchased by CLPs, however, yet it *repeatedly* rejected claims that trivial levels of UNE-L activity (including levels larger than BellSouth shows here) justified a finding of impairment.

If there is a single exhibit that captures the core debate in this proceeding, it is Exhibit JPG-5 (attached to this summary). Exhibit JPG-5 compares the competitive lines added by UNE-P and UNE-L, by wire center, throughout the state of North Carolina over the past six months. This exhibit best compares the level and geographic reach of the local competition currently underway in North Carolina through the two relevant entry strategies, UNE-L (loops *without* switching) and UNE-P (loops *with* switching). The difference between UNE-P and UNE-L could not be more striking – and it is this difference that is made possible by access to unbundled local switching. As JPG-5 shows, UNE-P is actively bringing local choice to every BellSouth exchange in the state,

no matter how large or small. In contrast, UNE-L is simply incapable of achieving anything on this scale.

In its simplest form, BellSouth is asking this Commission to conclude, based on the activity of UNE-L (the bottom chart on JPG-5), that UNE-P (the top chart) is not needed in North Carolina. Exhibit JPG-5 graphically illustrates the absurdity of that position (although it is equally clear from the exhibit why BellSouth would want the Commission to reach that conclusion – eliminate UNE-P and BellSouth's local monopoly is restored). Using the nomenclature of the TRO, the difference between the upper and lower graphs provides a vivid illustration of the impairment that constrains UNE-L that is overcome through access to unbundled local switching (thereby making UNE-P possible). The triggers are not satisfied in North Carolina, and the Commission should reject BellSouth's effort to eliminate the mass market local competition that is only now emerging in the state.

**COMPSOUTH'S
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133q**

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Joseph Gillan	<ul style="list-style-type: none">• Overview and introduction of BellSouth's direct case• Geographic market area• Local switching triggers	<ul style="list-style-type: none">• §51.319(d)(2)(ii) and (iii)• 47 C.F. R. §51.319(d)(2)(i)• 47 C.F. R. §51.319(d)(2)(iii)(A)

FILED

MAR 02 2004

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BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION

In re: Implementation of requirements arising)	
from Federal Communication Commission)	Docket No. P-100, Sub 133q
Triennial Review Order: Local Circuit Switching)	
for Mass Market Customers)	Filed: March 1, 2004
)	

SUMMARY OF SURREBUTTAL TESTIMONY OF
JOSEPH GILLAN
ON BEHALF OF COMPSOUTH

My surrebuttal testimony addresses two main points. First, my surrebuttal testimony explains that BellSouth is essentially relying on the same evidentiary record here – i.e., a shrinking base of trivial UNE-L activity – that the FCC relied upon in reaching its finding of impairment. The TRO is quite clear that the FCC expects the states were to apply judgment in the same manner as the FCC: “To ensure that the states implement their delegated authority in the same carefully targeted manner as our federal determinations, we set forth in this Order federal guidelines to be applied by the states in the execution of their authority pursuant to federal law.” A faithful application of the triggers should produce outcomes consistent with the FCC’s own findings – that is, where a state commission observes facts that are comparable to data that the FCC used to find impairment, then that *same* set of facts cannot be abused in a “trigger analysis” to reverse that finding. BellSouth’s trigger analysis does not justify reversing the FCC’s finding of impairment and must be rejected.

¹ TRO ¶ 189.
² Source: BellSouth Response to CompSouth No. 3 and AT&T No. 56.

Second, my surrebuttal testimony responds to BellSouth's claim that this Commission has no role adjudicating the "just and reasonable" rate for unbundled local switching in the unlikely event that the Commission finds that switching need not be unbundled under Section 251 of the Act (but which BellSouth must still offer to comply with its voluntary acceptance of Section 271). Section 271 of the Act makes clear that the items listed in the competitive checklist – including local switching – must be provided in one or more interconnection agreements or through its statement of generally available terms and conditions (SGAT), both of which are subject to state review and approval under section 252 of the Act. Although the FCC has adopted a (potentially) different pricing standard for section 271 network elements, it has never excused BellSouth from the arbitration procedure in section 252.

As the Commission aware, there are a number of overlapping responsibilities in the federal Act between the states and the FCC. For instance, the FCC has the authority to review the UNE rates established by this Commission, to assure that those rates comply with its TELRIC rules and section 271 (when those TELRIC rules apply). This issue is no different. State commissions have the first responsibility to *adjudicate* interconnection disputes by applying federal pricing rules – in this instance, applying the just and reasonable standard – while the FCC may review these same rates through an *enforcement* action. Nowhere has the FCC changed this basic scheme – the mere fact that the FCC recognized its continuing enforcement authority under section 271 did not eliminate the states' arbitration authority under the Act.

As to the appropriate rate that would justify a just and reasonable standard, my testimony explains that the existing TELRIC rates are just and reasonable and should be retained (at least until BellSouth proposes and justifies an alternative in a follow-up proceeding). BellSouth has acknowledged that (1) its objections to TELRIC do not apply to switching, (2) that the TELRIC and TSLRIC for switching (which BellSouth supports) are essentially the same, and (3) that for the main cost drivers, they are identical. In addition, my testimony shows that the existing TERLIC rates exceed the direct embedded cost of switching and provide a substantial (95%) contribution to its other costs. Consequently, there is no reason to conclude that different just and reasonable rates are appropriate for section 271 switching network elements than for section 251 switching network elements.

**MCI WORLDCOM COMMUNICATIONS, INC., & MCIMETRO
ACCESS TRANSMISSION SERVICES, LLC**

(Docket No. P-100, Sub 133q: TRO → UNE-P)

The NCUC is Providing the Direct, Rebuttal, and Surrebuttal Matrices of Issues and Executive Summaries for the Following MCI Witnesses:

Dr. Mark Bryant – Direct (1/9/04), Rebuttal (2/16/04), Surrebuttal (3/1/04)
Sherry Lichtenberg - Direct (1/9/04), Rebuttal (2/16/04), Surrebuttal (3/1/04)
James Webber - Direct (1/9/04), Rebuttal (2/16/04), Surrebuttal (3/1/04)

JAN 09 2004

Clerk's Office
N.C. Utilities Commission

Executive Summary of
the Testimony of
Dr. Mark Bryant

The FCC made a national finding that CLPs are impaired without unbundled access to ILEC local switching to serve mass-market customers. The Commission must conduct a market-by-market investigation into whether barriers to entry "are likely to make entry into a market uneconomic." If a market is defined too large, there may be a finding of no impairment even where many customers have no current choice of alternative providers and it is not certain new competitors can enter. Economic theory and practice, as well as the FCC's guidance, all suggest that the wire center is the most appropriate starting point for an analysis of whether CLPs are impaired without access to unbundled switching for mass-market customers.

An analysis, using a tool adapted from a model constructed on behalf of the NRRI, and considering the economic factors that affect the potential deployment of switching capability by CLPs, illustrates that the profitability of CLPs offering local exchange services in the absence of unbundled switching is highly uncertain. No one can say with certainty that any wire center in North Carolina is feasible for economic deployment of CLP local exchange service in the absence of UNE-P. Consequently, the Commission should proceed cautiously both in the analysis of the actual deployment "triggers" and in the analysis of potential deployment of CLP switching capacity. BellSouth stands poised to re-monopolize the competitive long-distance markets made possible by the divestiture of the former Bell System, to quash emerging local competition, and to extend the former Bell monopoly into newly emerging markets as well. An erroneous finding of no impairment with regard to access to unbundled switching in the mass market could have dire and irreversible consequences for North Carolina consumers, while an erroneous finding of impairment would entail far less

serious consequences, and would likely be self-correcting. Therefore, the FCC's finding

of CLP impairment in the absence of access to unbundled switching should be sustained.

FILED
JAN 09 2004

Executive Summary of
Direct Testimony of
Sherry Lichtenberg

Clerk's Office
N.C. Utilities Commission

To date, UNE-P has been the only service delivery method that has enabled MCI to serve residential and small business customers in North Carolina on a broad scale and will continue be the only way to provide such service for some time. MCI has every incentive to serve customers over its own network, and will do so where and when it makes operational and economic sense. Today's customers have experienced relatively seamless migrations among long distance carriers, and increasingly among local carriers as well. They will judge their experience with UNE-L carriers by the same standards, and so should the Commission.

Transitioning from UNE-P to UNE-L is currently complicated and difficult, in large part because of customer-impacting operational problems. Those issues involve extensive manual ordering and provisioning processes and multi-carrier coordination, as well as the exchange of critical information concerning the databases for customer service records, local facilities administration, E911, number portability, line information, caller name, directory listing, printed directories, and trouble handling. If the transition to UNE-L were made prematurely, multiple points of failure could result in delay, inability to receive calls and, worse yet, loss of dial tone for the consumer. Customer migration problems could lead to customers being "stranded" on a carrier's network, unable to move anywhere else. Thus, the progress that has been made toward a dynamic, competitive telecommunications market since the passage of the Telecommunications Act would be destroyed.

Moreover, moving existing customers from UNE-P to UNE-L is only one of the new processes that will be required to support local competition in North Carolina in a

facilities-based world. For UNE-L to be an acceptable service delivery method, it must allow competitors to meet and even exceed customers' expectations. In particular, migrations between carriers using UNE-L must be seamless and the systems and processes of the entire industry must be fully functional and capable of working together effectively.

The approaches suggested in this testimony to addressing the issues should provide a starting point for resolution. Additional issues are certain to arise as MCI and other carriers gain experience with UNE-L. The Commission will need to play a continuing role to ensure that all operational barriers to UNE-L implementation are addressed and resolved.

JAN 09 2004

P-100, Sub 133q
MCI WorldCom/MCImetro Access
Public Disclosure Document

Clerk's Office
N.C. Utilities Commission

Executive Summary of
Testimony of
James Webber

MCI cannot offer services currently to most of its customers absent access to

unbundled local switching. Before MCI can rely on a UNE-L deployment strategy, issues pertaining to loop provisioning, loop facilities, collocation, transport and EELs must be first be resolved.

Consequently, the Commission should approve, test and implement a *Mass Market Hot Cut* process that is designed to address ongoing carrier-to-carrier migrations. This process should be seamless, timely and economically practicable. Moreover, the process should not exclude critical order types such as CLP-to-CLP migrations and UNE-P to UNE-L or EEL provisioning scenarios. The Commission should also approve, test and implement a *Transitional Batch Cut* process that is sufficient to transition the embedded base of UNE-P customers to UNE-L while simultaneously managing increased daily volumes similar to those experienced with UNE-P over the past 12 to 24 months. BellSouth should employ automated processes that can minimize the level of manual intervention, coordination and communication required to facilitate hot cuts between carriers.

Unbundled loops with IDLC feeder should be provided by BellSouth on a timely basis without the necessity of "changing" the facilities over which connectivity is currently provided, unless spare copper facilities are readily and economically available.

Finally, the Commission should open proceedings to monitor performance related to the implementation and provisioning of collocation, transport and related services. There must also be EEL provisioning guidelines that assure that CLPs are able to purchase DS0 level loops in combination with transport, multiplexing, and concentration

as described in this testimony. Moreover, such EELs should be integrated into the Mass

Market Hot Cut and Transitional Batch Hot Cut Processes.

FILED

FEB 16 2004

**MCI'S
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133q**

Clerk's Office
N.C. Utilities Commission

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Mark Bryant	Market definition; local switching triggers; economic barriers	47 C.F.R. §§ 51.319 (d)(2)(i); 51.319 (d)(2)(iii)(A); 51.319 (d)(2)(iii)(B); TRO, ¶¶ 419 <u>et seq.</u> (local circuit switching), 61 <u>et seq.</u> (impairment analysis), 211 <u>et seq.</u> (mass market loop impairment)
Jim Webber	Impact of "no impairment" finding; lack of operational support for EELs; impairment arising from IDLC	47 C.F.R. §§ 51.319 (a)(2)(iii); 51.319 (d)(2)(ii); 51.319 (d)(2)(iii)(B)(2); TRO, ¶¶ 419 <u>et seq.</u> (local circuit switching); 285 <u>et seq.</u> (specific unbundling requirements); 575 <u>et seq.</u> (enhanced extended links)
Sherry Lichtenberg	Impairment arising from exponential increase in orders being handled by complex, manual systems; impairment arising from CLEC-to-CLEC migrations; inadequacy of BellSouth's proposed batch hot cut process	47 C.F.R. §§ 51.319 (d)(2)(ii); 51.319 (d)(2)(iii)(B)(2); 51.319 (d)(2)(iii)(C); TRO, ¶¶ 419 <u>et seq.</u> (local circuit switching)

There are a number of cost factors that vary among wire centers. While Dr.

Pleatsikas' market definition captures the differences in recurring rates for UNE loops and other ILEC rate elements, it fails to adequately capture the effect that the costs of transport and other ILEC charges may have on a CLP's decision to enter the market as a UNE-L based provider. While certain costs that the CLP will incur using its own switching facilities are not specific to the wire center, they are a less important factor in the entry decision than wire center specific fixed costs, which must be spread over a relatively much smaller number of customers.

The FCC has identified a number of factors that must be considered in determining which carriers may appropriately be counted as triggers. These include (1) corporate ownership, (2) active and continuing market participation, (3) intermodal competition, and (4) scale and scope of market participation. It would be a grave public policy error to base a finding of no impairment solely or largely on evidence of carriers self-deploying switching to serve small business customers, leaving North Carolina residential customers with no meaningful competitive alternative. The Commission should also consider whether the switch-based competitor is *offering service* over both all-copper and IDLC loops. Of the companies cited by BellSouth as satisfying the self-provisioning trigger, several obviously do not meet the criteria for a triggering company, and all these companies, in any event, represent only a very small and declining portion of the market in assessing the ability to provide a realistic competitive alternative to BellSouth.

Finally, without access to the model algorithms and the results of intermediate calculations, one cannot say with any certainty whether the BACE model is appropriately

calculating the costs and revenues pertinent to the potential deployment analysis. An analysis of the inputs used in the model and the overall operation of the model reveals a number of aspects of the model that cause it to present misleading and inaccurate results. Moreover, it cannot be known with any certainty what costs would be incurred and what revenues would be available to CLPs in a post-UNE-P environment. The best that can be said, whatever model is used, is that under some sets of assumptions, CLPs can be profitable in some wire centers in North Carolina. Under other sets of assumptions, CLPs are not profitable in any wire center in North Carolina. Given this uncertainty, the Commission cannot conclude that CLPs are not impaired in any market in North Carolina.

BellSouth fails to present evidence that its highly manual and complex systems can process mass market volumes of UNE-L migration orders that would represent an exponential increase over current UNE-L volumes. BellSouth's reliance on 271 decisions is misplaced, because in the *Triennial Review Order*, the FCC determined that its 271 decisions do not support "no impairment" findings since in those cases CLECs were not relying on hot cuts for provisioning of mass market volumes. Likewise, BellSouth's current performance data do not support BellSouth's position because it is based on today's low UNE-L volumes. Moreover, BellSouth's performance data show that UNE-L involves low flow through (and thus high manual processing) and much longer provisioning intervals than for UNE-P. Finally, the Florida third-party test relied upon by BellSouth did not involve the provisioning or mass market volumes of UNE-L orders. Thus, BellSouth has never, even under test conditions, handled the volume of orders it would be called to process in a UNE-L environment.

BellSouth's force model reveals the manual nature of its UNE-L systems because BellSouth's plan for addressing mass market volumes is simply to hire a large number of people to handle them. Using a mathematical model to calculate the number of additional people that would be necessary in theory to handle such increased volumes fails to address the fundamental question of whether simply staffing up can address the problem. In the end, BellSouth just says "trust me." The Commission should not accept that paper promise since every hot cut that fails will directly impact a North Carolina consumer.

A CLEC-to-CLEC migration requires the losing CLEC to make the loop available to the winning CLEC for re-use, which requires providing the correct circuit ID and

channel and pair assignment information to the winning CLEC. In addition, the losing CLEC must initiate the 10-digit LNP trigger in its switch and unlock the E911 database. While BellSouth is not directly involved in this process, the customer will not have the service he has requested until that process is complete. This Commission should not force CLECs to move to UNE-L until the CLEC-to-CLEC migration process is in place and tested, since the only "winner" in the chaos that will ensue if customers are "stranded" on one CLEC's platform will be BellSouth.

BellSouth has developed a manually intensive batch ordering process that does not provide a seamless method for transitioning existing UNE-P customers to UNE-L. BellSouth's existing batch ordering process requires additional steps (a manual spreadsheet, negotiation for due dates and a new batch LSR) to the process. BellSouth recently proposed improvements to its current process, although it has provided little detail with its proposal and it appears that much (if not all) of the proposal would be implemented after the Commission's ruling in this proceeding. The limited level of detail provided by BellSouth to date on its proposal does not allow this Commission or CLECs to determine whether it meets CLECs' needs.

BellSouth proposes to eliminate unbundled local switching ("ULS") from 8 of 22

CEAs in North Carolina, which would cover virtually all of the UNE-P lines in BellSouth's serving territory. A high percentage of MCI's UNE-P based end user lines are provisioned within the wire centers where BellSouth claims CLECs are not impaired without access to ULS. Approximately 148,868, or 92 percent, of all CLEC UNE-P lines are in these areas. A finding of "no impairment" would require these lines to be migrated from UNE-P to UNE-L, and, given the operational impairment that exists, would destroy UNE-P based mass market local competition in North Carolina.

Neither BellSouth's individual hot cut process nor its batch ordering process permit CLECs to transfer retail or UNE-P lines to EELs. The Commission should require BellSouth to support EELS (with concentration, if requested) in its individual hot cut process and its batch process.

BellSouth's network contains a significant percentage of IDLC based loops, which means it is critical that BellSouth have processes that seamlessly migrate to UNE-L customers that are served on IDLC-fed loops. BellSouth has failed to demonstrate that it can do so.

**MCI'S
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133q**

Sub rebuttal

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Mark Bryant	Economic barriers; Market definition; Local switching triggers; Operational barriers	47 C.F.R. §§51.319 (d)(2)(iii)(B); 51.319 (d)(2)(i); 51.319 (d)(2)(iii)(A); 51.319 (d)(2)(iii)(B); TRO, ¶¶ 419 <u>et seq.</u> (local circuit switching), 61 <u>et seq.</u> (impairment analysis), 211 <u>et seq.</u> (mass market loop impairment)
Jim Webber	Operational barriers; Hot cut processes; Specific unbundling requirements for mass market loops; Enhanced extended links;	47 C.F.R. §§ 51.319 (d)(2)(iii)(B); 51.319 (d)(2)(ii); 51.319 (a)(2)(iii); TRO, ¶¶ 419 <u>et seq.</u> (local circuit switching), 575 <u>et seq.</u> (enhanced extended links).
Sherry Lichtenberg	Operational barriers; Hot cut processes; Transitional use of unbundled local switching	47 C.F.R. §§ 51.319 (d)(2)(iii)(B); 51.319 (d)(2)(ii); 51.319 (d)(2)(iii)(C); TRO, ¶¶ 419 <u>et seq.</u> (local circuit switching)

Dr. Aron's arguments misstate the situation facing the Commission and are both unsupported and misleading. MCI does not recommend that the Commission find impairment where none exists. What MCI does recommend is that the Commission be very certain that impairment does not exist, in view of the irreversible consequences of an erroneous finding of non-impairment.

The appropriate market definition is the wire center. One certainly can aggregate markets for administrative convenience perhaps, but such an aggregation is not a market definition. In order to determine, as Dr. Pleatsikas suggests, that "wire centers in a geographic area share certain cost and other economic characteristics," it is necessary first to examine the costs and economic characteristics *for each wire center*. Dr. Pleatsikas seems to assume that because UNE rates are applicable to all wire centers in a particular UNE rate zone, those wire centers must share similar cost characteristics. The rate for unbundled network elements, however is only one factor that affects the costs and revenues that in turn affect a CLP's entry decision. Wire centers also vary along other dimensions. The number of customers served from each wire center, the mix of business and residential customers in each wire center, the proportion of customers served via digital loop carrier equipment, the demographic characteristics of the customers in the wire center, and the distance of the wire center from the CLP's switch all have an impact on the potential profitability of providing service in the wire center.

Although the cost of a CLP switch and some of the costs incurred by a CLP in marketing services apply to a geographic area larger than the wire center,

the real question is whether the economies of scale achievable through recovery of these costs over a larger customer base are sufficient to overcome the cost differences that exist among wire centers. The greater proportion of the economies of scale that are present in switch costs are achieved very rapidly and, once the CLP has gained a relatively small share of the market, acquisition of additional customers does not result in significant additional cost savings. This being the case, a CLP contemplating adding a collocation to a wire center where profitability is marginal or negative must balance the losses that it will incur by collocating in that wire center against the cost savings that it will achieve in its switch costs. A wire center that is losing two or three dollars per line per month will not be made to look profitable if the cost savings in switch costs are a few pennies per line per month.

Clearly, BellSouth's proposed market definition obscures important factors that influence a CLP's decision to provide service. If the Commission were to accept BellSouth's proposed market definition and non-impairment claims, wire centers that according to BellSouth's own earlier analysis, cannot be profitably served by CLPs would be found to be not impaired.

1 When BellSouth received authority to provide in-region long distance authority in
2 North Carolina, the only service delivery method by which CLPs were providing high
3 volume service to mass market customers was UNE-P. As the FCC found in the
4 *Triennial Review Order*, "the number of hot cuts performed by BOCs in connection with
5 the section 271 process is not comparable to the number that incumbent LECs would
6 need to perform if unbundled switching were not available for all customer locations
7 served with voice-grade loops." *Triennial Review Order*, ¶ 469. The flow-through that
8 might be acceptable for low volumes of UNE-L orders could cause impairment for mass
9 market volumes. And mechanization percentages on the order of what BellSouth is
10 providing, combined with its manual provisioning processes, almost certainly would give
11 rise to impairment for CLPs attempting to submit high volumes of UNE-L migration
12 orders.

13 There is really no dispute that manual processing is involved in most BellSouth
14 UNE-L migration orders. BellSouth's existing UNE-L processes currently handle low
15 volumes of orders. BellSouth's performance data is of limited value because CLPs are
16 not submitting large volumes of UNE-L orders. Moreover, the hot cut metrics BellSouth
17 refers to do not provide data on non-coordinated cutovers that MCI would use for
18 residential customers, and in any event only provide a small window into the overall
19 process, focusing on the hot cut itself and provisioning troubles within seven days after
20 the cutover. BellSouth has submitted evidence of a third-party test, done without the
21 involvement of CLPs or a public service commission, that evaluated aspects of
22 BellSouth's batch hot cut process, but involved only a few hundred orders submitted over
23 the course of four days in three central offices.

1 This case is not just about BellSouth's performance, but about all carriers' -- and
2 their customers' -- experience. Although BellSouth has participated in one workshop
3 process in Florida with respect to CSRs, its position generally is that its current UNE-L
4 processes are good enough and that CLPs should have the burden of identifying specific
5 problems and then requesting solutions through the change management process.
6 BellSouth stands alone as the only RBOC that has refused to undertake such a
7 collaborative process.

8

9

1 While BellSouth states that IDLC based loops will be unbundled, it side-
2 steps the shortcomings of its IDLC unbundling options, which include prolonged
3 installation intervals, increased costs and lower quality services. Even under the
4 most favorable circumstances, BellSouth's loop provisioning intervals are
5 substantially longer than the intervals CLPs and mass market customers currently
6 experience with UNE-P migrations. To make matters worse, BellSouth's IDLC
7 unbundling options may require special construction involving delays and the
8 assessment of additional charges. ILECs are required to "provide
9 nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable
10 of voice-grade service (i.e. equivalent to DS0 capacity)" in cases where
11 alternative copper facilities are not provided. Yet many customers would
12 experience degraded service quality, for example, with regard to dial-up modem
13 performance, when they are moved off of IDLC.

14 CLPs cannot fully ascertain the extent to which they will be able to utilize
15 EELs to support the mass market. Early indications are that the processes will not
16 be timely, seamless or cost effective. DS0 EELs are not currently provided to
17 CLPs in any significant volume and it is entirely unclear if, or when, CLPs will be
18 able to utilize EELs in order to support the mass market. BellSouth's batch hot
19 cut process does not include cuts to EELs, stating that "BellSouth has agreed to
20 include hot cuts to DS0 EELs in its batch and individual hot cut processes," with a
21 target implementation date of July 2004. It would appear that the ordering
22 process may be manual whereas the UNE-P migration process is mechanized. It
23 also appears that the process may require that multiple orders be placed to

1 provision a single customer onto a DS0 EEL facility and that more information
2 may be required to place such an order than would be required to place an order
3 for UNE-P based services.

4 While BellSouth asserts that it is committed to devoting the resources
5 necessary to continue to meet the intervals prescribed, if all impediments to UNE-
6 L competition were removed and all CLP demand for loops had to be supported
7 through collocation and EELs, then demand for collocation could increase
8 dramatically. Hence, it remains to be seen whether BellSouth's assertion will be
9 proven.

**UNITED STATES DEPARTMENT OF DEFENSE AND ALL
OTHER FEDERAL EXECUTIVE AGENCIES**

(Docket No. P-100, Sub 133q: TRO → UNE-P)

The NCUC is Providing the Rebuttal Matrix of Issues and Executive Summary for the
Following DOD Witness:

Harry Gildea – Rebuttal (2/16/04)

**UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

MATRIX SUMMARY OF POSITIONS

Docket No. P-100, Sub 133q

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Harry Gildea	Local circuit switching DSO capacity determinations	47 C.F.R. §51.319(d)(2)

**BEFORE THE
STATE OF NORTH CAROLINA
UTILITIES COMMISSION**

FILED
FEB 16 2004
Clerk's Office
N.C. Utilities Commission

In the Matter of

Triennial Review Order – UNE–P

Docket No. P–100, Sub 133q

**SUMMARY OF THE REBUTTAL TESTIMONY
of
HARRY GILDEA
on behalf of
THE UNITED STATES DEPARTMENT OF DEFENSE AND
ALL OTHER FEDERAL EXECUTIVE AGENCIES**

FEBRUARY 16, 2004

Federal installations, facilities and offices range widely in size, and are located throughout all of North Carolina. The business telecommunications services used by Federal Executive Agencies ("FEAs") at these places range from large complex systems to small office services. To maximize competition among providers of these vital systems and services, FEAs are concerned with procedures governing the availability of unbundled network elements ("UNEs") for both the "enterprise" and the "mass" markets.

In this rebuttal testimony, I address issues concerning the local circuit switching UNE raised in the FCC's *Triennial Review Order*. First, I discuss the description of the markets to be used in evaluating the need for the local circuit switching UNE. I believe that Bell South proposes an acceptable procedure for defining the markets to employed

for analyses of the conditions for “no impairment” under the self-provisioning trigger for this UNE. Secondly, I address claims by witnesses for BellSouth and competitive local exchange carriers concerning whether the self-provisioning trigger has been met in the two markets identified by BellSouth. I believe that Bell South has fallen short of the requirements so far. For more and better competition, I urge the Commission to ensure that BellSouth adheres rigorously to the bright line tests for “no impairment” established by the FCC.

AT&T COMMUNICATIONS OF THE SOUTHERN STATES, LLC

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Rebuttal Executive Summary for the Following AT&T Witness:

Jay M. Bradbury – Rebuttal (3/1/04)

AT&T

North Carolina Docket P100 Sub 133s
Rebuttal Testimony Summary of Jav M. Bradbury

AT&T is not a wholesale provider of either high capacity loops or dedicated transport. AT&T is not a self-provider of dedicated transport. The high-capacity loops that AT&T self-provides all carry three or more DS3s of demand and, therefore, are not relevant as self-provisioning triggers under the prescribed actual deployment tests. As such, they provide no probative data for use in the prescribed potential deployment analysis.

BellSouth was aware of, but chose to ignore, the facts about AT&T's operations in North Carolina. BellSouth's conclusions that OCn facilities are the equivalent of DS3 and DS1 facilities, that dark fiber must exist because there is lit fiber, and that dedicated transport routes can include switching, are all incorrect. BellSouth has failed to provide the evidentiary demonstration required by the FCC in the TRO for relief of its obligations to provide high-capacity loops and dedicated transport as UNEs.

BELLSOUTH TELECOMMUNICATIONS, INC.

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Direct and Rebuttal Matrices of Issues and Executive Summaries for the Following BellSouth Witnesses:

Aniruddha (Andy) Banerjee, Ph.D. – Direct (2/16/04) & Rebuttal (3/1/04)

A. Wayne Gray - Direct (2/16/04)

Shelley W. Padgett - Direct (2/16/04) & Rebuttal (3/1/04)

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133s
TRIENNIAL REVIEW ORDER – HIGH CAPACITY LOOP AND TRANSPORT**

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Dr. Aniruddha Banerjee	Potential deployment test	47 C.F. R. §51.319(a)(5)(ii) 47 C.F. R. §51.319(a)(6)(ii) 47 C.F. R. §51.319(e)(2)(ii) 47 C.F. R. §51.319(e)(3)(ii)
A. Wayne Gray	Network issues relating to loop/transport triggers test; Network issues and costs relating to potential deployment test	47 C.F. R. §51.319(a)(4)(ii) 47 C.F. R. §51.319(a)(5)(i)(A) and (B) 47 C.F. R. §51.319(a)(5)(ii) 47 C.F. R. §51.319(a)(6)(i) and (ii) 47 C.F. R. §51.319(e)(1)(ii) 47 C.F. R. §51.319(e)(2)(i)(A) and (B) 47 C.F. R. §51.319(e)(2)(ii) 47 C.F. R. §51.319(e)(3)(i)(A) and (B) 47 C.F. R. §51.319(e)(3)(ii)
Shelley W. Padgett	Loop/transport triggers tests; transitional issues	47 C.F. R. §51.319(a)(4)(ii) 47 C.F. R. §51.319(a)(5)(i)(A) and (B) 47 C.F. R. §51.319(a)(6)(i) 47 C.F. R. §51.319(e)(1)(ii) 47 C.F. R. §51.319(e)(2)(i)(A) and (B) 47 C.F. R. §51.319(e)(3)(i)(A) and (B) TRO, ¶ 339 (transitional period relating to loops) TRO, ¶ 417 (transitional period relating to transport)

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PUBLIC VERSION
ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.
EXECUTIVE SUMMARY OF ANIRUDDHA (ANDY) BANERJEE, Ph.D.
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-100 SUB 133S
FEBRUARY 16, 2004

In its *Triennial Review Order*, the Federal Communications Commission ("FCC") has established a national finding of impairment for high capacity loops and transport facilities at various capacity levels. This finding automatically requires incumbent local exchange carriers ("ILECs") to offer those loops and transport facilities on an unbundled basis to requesting competitive local providers ("CLPs"). However, the FCC has also formulated various tests to determine whether exceptions to the automatic unbundling requirement are warranted (particularly at the DS3 and dark fiber capacity levels) at specific customer locations or transport routes. In the "self-provisioning trigger test" for DS3 and dark fiber facilities, the FCC requires a demonstration that a minimum number of CLPs (two for high capacity loops to serve a customer location, three for high capacity transport facilities to serve transport routes) have actually deployed their own facilities to that customer location or transport route. However, even if such a demonstration is not possible, i.e., the trigger is not "facially met," the FCC allows a subsequent analysis—called the "potential deployment test"—with which to determine whether CLPs *could* potentially serve the customer location or transport route using their own facilities. The latter test only requires a showing that it is *financially feasible* for the requisite number of CLPs to deploy their own high capacity facilities.

In my Direct Testimony, I regard the potential deployment test as being complementary to the self-provisioning trigger test. That is, if the *total* number of CLPs that are actually serving, or can potentially serve, a customer location or transport route using their own facilities equals at least two for the customer location or at least three for the transport route, then I regard that as evidence that the FCC's criterion for non-impairment has been met. For

the customer location or route in question, therefore, ILECs should no longer be obliged to provide unbundled access to the DS3 or dark fiber facilities.

My Direct Testimony conducts the potential deployment test for high capacity loops (needed to serve customer locations in the enterprise market) and transport facilities (needed to serve transport routes) within the BellSouth-served areas of North Carolina. To conduct this test, I rely on both revenue and cost information for CLPs (using actual data whenever possible and estimates otherwise) and the FCC's instructions to take various real-world factors into account. I demonstrate that it is financially feasible for a CLP to deploy its own high capacity facilities whenever the net present value ("NPV") from doing so is positive over a ten-year recovery period. As explained earlier, for this test to be satisfied, no *actual* CLP presence is required (although there may be some); rather it suffices to show that a CLP *could* deploy its own high capacity facilities on a positive NPV basis.

Based on this framework for the potential deployment test, I find that CLPs in the BellSouth-served areas of North Carolina are not impaired in serving—i.e., can deploy their own high capacity (DS3 and dark fiber) facilities to—139 customer locations (multi-tenant buildings occupied by enterprise market customers) and 6 transport routes. Appendices AXB-2 and AXB-3 attached to my Direct Testimony identify those customer locations and routes, respectively.

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BELLSOUTH TELECOMMUNICATIONS, INC.
EXECUTIVE SUMMARY OF A. WAYNE GRAY
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
DOCKET NO. P-100, SUB 133S
FEBRUARY 16, 2004

7 My direct testimony is organized into two major parts. First, I describe the network architecture
8 an efficient Competitive Local Provider ("CLP") would utilize to self provide high capacity
9 loops over which it serves its customers. I describe the physical equipment needed as well as the
10 meaning of some of the terms used to describe the levels of capacity required. I also explain the
11 relationship of fiber optic cable to the levels of capacity and the cost to provide the service to an
12 end user building.

13
14 In the second part of my testimony, I explain the high-capacity transport facilities needed by a
15 CLP to self-provide its interoffice routes. I define a "route," describe the network architecture,
16 explain the operational readiness, and clarify the term dark (or "unlit") fiber. I also describe the
17 costs for a CLP to deploy these transport facilities and briefly explain that a CLP does have
18 access to Co-Carrier Cross-Connects ("CCXC") if it desires to use them to connect collocations.

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N.C. Utilities Commission

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 EXECUTIVE SUMMARY OF SHELLEY W. PADGETT
3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
4 DOCKET NO. P-100, SUB 133S
5 FEBRUARY 16, 2004
6

7 My testimony identifies customer locations and routes in BellSouth's territory in North
8 Carolina where the FCC's wholesale competitive facilities and self-provisioning triggers have
9 been met and where this Commission must find that competing local providers (CLPs) are not
10 impaired without access to unbundled high-capacity loops or dedicated transport. The first part
11 of my testimony shows that the triggers have been met in 73 customer locations for DS1 loops,
12 76 customer locations for DS3 loops, and 74 customer locations for dark fiber loops. I first
13 describe the FCC's triggers and then discuss the proper interpretation of the triggers, including
14 the termination point of the loop. I describe BellSouth's methodology in conducting this
15 analysis, including instances in which BellSouth was forced to rely on third-party data to conduct
16 its analysis and how BellSouth determined if a facility was available for wholesale.

17 The second part of my testimony shows that the triggers have been met on 91 routes for
18 DS1 transport, on 97 routes for DS3 transport, and on 89 routes for dark fiber transport. I
19 describe the FCC's triggers and the proper interpretation of the triggers, including
20 misinterpretations of the term "route". I describe BellSouth's methodology in conducting the
21 analysis, including instances in which BellSouth was forced to rely on its own data to conduct its
22 analysis and how BellSouth determined wholesale availability.

23 I then briefly discuss the transition to a market rate environment when the Commission
24 finds that no impairment exists along a particular route or to a specific customer location.

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**BELLSOUTH TELECOMMUNICATIONS, INC.'S
REBUTTAL MATRIX SUMMARY OF POSITIONS**

DOCKET NO. P-100, SUB 133s

TRIENNIAL REVIEW ORDER – HIGH CAPACITY LOOP AND TRANSPORT

Clerk's Office
North Carolina
Public Utilities Commission

WITNESS	SUBJECT MATTER OF TESTIMONY	TRO DECISIONAL CRITERIA
Dr. Aniruddha Banerjee	Potential deployment test	47 C.F. R. §51.319(a)(5)(ii) 47 C.F. R. §51.319(a)(6)(ii) 47 C.F. R. §51.319(e)(2)(ii) 47 C.F. R. §51.319(e)(3)(ii)
Shelley W. Padgett	Loop/transport triggers tests; transitional issues	47 C.F. R. §51.319(a)(4)(ii) 47 C.F. R. §51.319(a)(5)(i)(A) and (B) 47 C.F. R. §51.319(a)(6)(i) 47 C.F. R. §51.319(e)(1)(ii) 47 C.F. R. §51.319(e)(2)(i)(A) and (B) 47 C.F. R. §51.319(e)(3)(i)(A) and (B) TRO, ¶ 339 (transitional period relating to loops) TRO, ¶ 417 (transitional period relating to transport)

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1 **ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.**
2 **EXECUTIVE SUMMARY OF ANIRUDDHA (ANDY) BANERJEE, Ph.D.**
3 **BEFORE THE NORTH CAROLINA UTILITIES COMMISSION**
4 **DOCKET NO. P-100 SUB 133S**
5 **MARCH 1, 2004**
6

7 My Rebuttal Testimony responds to certain economic issues raised in the Direct
8 Testimonies of Gary J. Ball (on behalf of Competitive Carriers of the South) and Jake E.
9 Jennings (on behalf of NewSouth Communications Corp.) that were filed in this proceeding on
10 January 30, 2004. Mr. Ball purports to offer “a workable framework for evaluating ILEC
11 claims of non-impairment” based on tests and analyses established by the Federal
12 Communications Commission (“FCC”) in its *Triennial Review Order*. My Rebuttal Testimony
13 indicates that Mr. Ball’s “framework”—as far as it concerns the conduct of the potential
14 deployment test—is deficient in at least two important respects.

15 First, Mr. Ball adopts a flawed definition of the term “customer location.” If accepted,
16 that definition would have serious adverse consequences for the potential deployment analysis.
17 Second, Mr. Ball dismisses the relevance of the potential deployment test in the event that the
18 self-provisioning trigger test is not satisfied for a given customer location or transport route. In
19 fact, the reasons he constructs for conducting the potential deployment test are themselves
20 flawed and run counter to the FCC’s own instructions about when and how that test should be
21 conducted.

22 My Rebuttal Testimony also points out the apparent omission from Mr. Jennings’
23 testimony of any mention of the potential deployment test which, as indicated by the FCC, has a
24 complementary role to play in any impairment analysis when the self-provisioning and
25 wholesale facilities trigger tests are not fully satisfied.

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 EXECUTIVE SUMMARY OF SHELLEY W. PADGETT
3 BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
4 DOCKET NO. P-100, SUB 133S
5 MARCH 1, 2004
6

7 My testimony addresses two primary areas of the TRO that Mr. Ball interprets
8 incorrectly: the definition of a route and the definition of a customer location. I also
9 address the transition period proposals made by both Mr. Ball and Mr. Jennings.

10 My testimony addresses Mr. Ball's apparent belief that the FCC doesn't mean
11 what it said when it defined a "route" for purposes of the trigger analysis to include any
12 transmission path between identical end points regardless of any intermediate switches or
13 wire centers. I also address his misinterpretation of the requirement that the carrier be
14 "operationally ready" to provide transport to mean that the carrier is currently providing
15 transport service and the fact that the triggers analysis includes DS3s that are carried on
16 OCn facilities.

17 I also discuss Mr. Ball's invented requirement that the customer location referred
18 to in the FCC's trigger analysis discussion is a single unit within a multi-tenant building.
19 This defies logic as it would effectively negate the stated intentions of the FCC in setting
20 up the triggers in the first place and clearly goes against the FCC's use of the term in its
21 discussion.

22 Lastly, I address the extended transition periods advocated by Mr. Ball and Mr.
23 Jennings. There is no reason to delay the move to a market-based environment when the
24 Commission has found that no impairment exists in a particular building or along a
25 particular route.

COMPETITIVE CARRIERS OF THE SOUTH

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Direct and Rebuttal Matrix of Issues and Executive Summaries for the Following CompSouth Witness:

Gary J. Ball – Direct (2/16/04) & Rebuttal (3/2/04)

FILED

FEB 16 2004

**COMPETITIVE CARRIERS OF THE SOUTH
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133s**

Clerk: Citron
N.C. Utilities Commission

Witness	Subject Matter of Testimony	TRO Decisional Criteria
Gary Ball	Loop Triggers	47 C.F.R. § 51.319(a)(4), (5)(i), (6)(i) (and related TRO sections)
	Transport Triggers	47 C.F.R. § 51.319(e)(1), (2)(i), (3)(i) (and related TRO sections)
	Potential deployment test	47 C.F.R. §§ 51.319(a)(6)(ii), 51.319(e)(2)(ii), (3)(ii) (and related TRO sections)
	Transition Issues	TRO ¶¶ 339, 417, 584

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
DIRECT TESTIMONY OF GARY J. BALL ON BEHALF OF
COMPETITIVE CARRIERS OF THE SOUTH**

The Competitive Carriers of the South ("CompSouth") are sponsoring the attached testimony of Gary J. Ball, an independent consultant. CompSouth is a coalition of competitive carriers operating in the Southeast, including in North Carolina, that are committed to the advancement of policies that encourage local and long distance competition in the state.

In the *Triennial Review Order*, the Federal Communications Commission ("FCC") made a finding on a nationwide level that CLECs are impaired without access to unbundled high capacity loops and dedicated transport. The FCC stated that evidence of non-impairment was minimal. The FCC established, however, two triggers -- the self-provisioning trigger and the wholesale facilities trigger -- pursuant to which the ILECs could challenge the FCC's findings of impairment on a location-specific and route-specific basis (and for each capacity level).

In his testimony, Mr. Ball addresses the appropriate application of these triggers, and explains that the application of the triggers is not a mere counting exercise. Specifically, in part two, Mr. Ball addresses the application of the self-provisioning triggers, and provides the proper framework for interpreting an IELC's claim that the triggers have been met. In part three, Mr. Ball explains the wholesale triggers for high capacity lops and transport, and discusses the requirements necessary to define a carrier as wholesale provider. In doing so, Mr. Ball elaborates on the requirements set forth in those triggers, such as what it means to be

operationally ready, among other issues. Mr. Ball also emphasizes that, consistent with the FCC's rules and orders, the triggers must be applied on a location-specific and route-specific basis and for each capacity level for which the ILEC challenges the national finding of impairment.

In his testimony, Mr. Ball also addresses situations where competitive providers still may be impaired at a particular customer location or on a route even if the trigger has been met. Mr. Ball also discusses the appropriate criteria for potential deployment claims.

Lastly, as explained herein, it is imperative that the Commission adopt an appropriate transition period for any loops or transport routes that it delists. To this end, Mr. Ball states that, given the complexity of the transition issues, that the Commission should consider those issues in a separate proceeding. Mr. Ball also identifies several issues that the Commission should address in developing an appropriate transition period.

PUBLIC DISCLOSURE DOCUMENT

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
REBUTTAL TESTIMONY OF GARY J. BALL ON BEHALF OF
COMPETITIVE CARRIERS OF THE SOUTH**

Docket No. P-100, Sub 133s

The Competitive Carriers of the South ("CompSouth") are sponsoring the attached rebuttal testimony of Gary J. Ball, an independent consultant. In his rebuttal testimony, Mr. Ball responds to BellSouth's direct testimony in this proceeding. Specifically, Mr. Ball addresses the appropriate application of the triggers set forth in the Federal Communications Commission's *Triennial Review Order* ("TRO"), and explains several instances in which BellSouth witness Shelley W. Padgett is improperly applying the triggers. Mr. Ball also addresses BellSouth's claims that the triggers have been satisfied on numerous transport routes and customer locations, and explains why these claims are overstated. In support of his testimony, Mr. Ball provides two exhibits (one for loops and one for transport) illustrating the loops and routes that CLECs indeed serve in North Carolina based on information compiled in CLEC discovery responses.

Mr. Ball also responds to BellSouth's potential deployment analysis, and explains why the analysis is deficient. Lastly, Mr. Ball explains why BellSouth's transition plan is inadequate.

KMC TELECOM III, LLC

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Rebuttal Matrix of Issues and Executive Summary for the Following KMC Witness:

Marva Brown Johnson – Rebuttal (3/2/04)

**KMC TELECOM III, LLC
MATRIX SUMMARY OF POSITIONS
DOCKET NO. P-100, SUB 133s**

Witness	Subject Matter of Testimony	TRO Decisional Criteria
Marva Brown Johnson	Loop Triggers	47 C.F.R. § 51.319(a)(4), (5)(i), (6)(i) (and related TRO sections)
	Transport Triggers	47 C.F.R. § 51.319(e)(1), (2)(i), (3)(i) (and related TRO sections)
	Transition Issues	TRO ¶¶ 339, 417, 584

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
REBUTTAL TESTIMONY OF MARVA BROWN JOHNSON ON BEHALF OF
KMC TELECOM III, LLC**

FILED

Docket No. P-100, Sub 133s

MAR 02 2004

Clerk's Office
North Carolina Utilities Commission
KMC Telecom III, LLC ("KMC") is sponsoring the attached rebuttal testimony of Marva Brown Johnson, Senior Regulatory Counsel for KMC Telecom Holdings, Inc, the parent company of KMC. In her rebuttal testimony, Ms. Johnson responds to BellSouth's direct testimony in this proceeding. Specifically, Ms. Johnson addresses BellSouth's claims that KMC is a trigger candidate at certain customer locations and on particular dedicated transport routes. First, Ms. Johnson addresses BellSouth's claim that KMC's transport facilities count toward satisfying the fact based triggers established by the Federal Communications Commission ("FCC") for dedicated transport. In support of her position, Ms. Johnson provides a description of KMC's transport facilities in North Carolina and explains how KMC's transport facilities in North Carolina do not satisfy the fact specific transport triggers established by the FCC for dedicated transport.

NEWSOUTH COMMUNICATIONS, INC.

(Docket No. P-100, Sub 133s: TRO → High Capacity Loop and Transport)

The NCUC is Providing the Direct Matrix of Issues and Executive Summary for the Following NewSouth Witness:

Jake Jennings – Direct (2/20/04)

**NEWSOUTH COMMUNICATIONS, INC.
MATRIX SUMMARY OF POSITION
DOCKET NO. P-100, SUB 133s**

FILED

FEB 26 2004

Gen's Office
N.C. Utilities Commission

Witness	Subject Matter of Testimony	TRO Decisional Criteria
Jake Jennings	Decisional criteria: actual deployment triggers, potential deployment, and transitional issues	47 C.F.R. § 51.319(a)(2)(ii), § 51.319(e), and related TRO sections.

**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

**EXECUTIVE SUMMARY OF THE
DIRECT TESTIMONY OF JAKE JENNINGS ON BEHALF OF
NEWSOUTH COMMUNICATIONS, INC.**

FILED
FEB 20 2004

Clerk's Office
N.C. Utilities Commission

The purpose of my testimony is to provide: (1) an overview of CompSouth and its member companies; (2) an overview of NewSouth and its entry into the local market as a facilities-based CLEC and the benefits of competition that NewSouth, like other facilities-based CLECs, provides to North Carolina customers; (3) a brief overview of the FCC's Triennial Review Order (TRO) and to highlight the importance of continued access to unbundled loops and transport to these companies; and finally, (4) an explanation, from a business perspective, as to why the Commission must provide for a systematic transition program that will allow carriers to transition effectively from the ILECs' unbundled network elements to alternative arrangements if, and when a network element is delisted as a UNE under Section 251(c)(3) of the Telecommunications Act.